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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,253	03/02/2004	John C. Eisinger	13009US03	2792

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EXAMINER

BASICHAS, ALFRED

ART UNIT PAPER NUMBER

3749

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/791,253

Applicant(s)

EISINGER ET AL.

Examiner

Alfred Basichas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 19 April 2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 5, 6, 11, 12, 18-20, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogden (4,699,120), which shows all of the claimed limitations. Ogden shows a grill including, among other things, a grill bottom 12, a generally vertical wall 20, a non-round bottom with flat portion 82, an ash pan 70 and tab 96.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-12 and 18-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chavana (6,363,925) in view of Ogden (4,699,120). Chavana discloses substantially all of the claimed limitations including, among other things, a charcoal grill assembly 100 including a generally non-round pan 140 including a generally vertical wall (fig. 7), a non-round generally horizontal base (fig. 7) including an aperture 720, a slope leading downward and inward from said wall to said aperture (figs. 1 and 7), further including a removable receptacle 135 for receiving waste from said pan, said removable receptacle positioned under said aperture, wherein said pan is

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installed in a cart 120,150, wherein said pan has a perimeter and said cart includes a frame and said frame has an interior perimeter and said interior perimeter of said frame is less than said perimeter of said pan (fig. 4), wherein said receptacle includes a handle 145,230 and said handle is used to position said receptacle along said mounting, wherein said receptacle is removeably positioned into said aperture, wherein said receptacle further includes a tab 145 and said tab is used to position said receptacle into said aperture and remove said receptacle from said aperture and, wherein said cart includes wheels 130 for assisting the movement of said cart.

Chavana does not specifically recite that the ash catcher is the drop in type. Ogden teaches a grill with a drop in ash catcher 70. The manner in which the ash catcher is attached to the bottom of the grill is merely a matter of design choice based on manufacturing and cost considerations. The choice of a drop in system that is usually cheaper to manufacture, as it requires a simpler structure has the clear benefit of requiring less time and energy in the manufacture thereof, and hence reduces costs of manufacture. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the teaching of a drop in ash catcher as taught by Ogden into the apparatus disclosed by Chavana, so as to reduce manufacture time and cost.

7. Claims 13-17 rejected under 35 U.S.C. 103(a) as being unpatentable over Ogden (4,699,120) or Chavana (6,363,925) in view of Ogden (4,699,120). Official Notice is given that providing a cart with at least one wheel on each of its legs is old and well known in the art. Such an arrangement has the clear and obvious benefit of providing

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for easier and more convenient transport of the grill. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the claimed wheel arrangement into the invention disclosed by Chavana, so as to provide for easier and more convenient transport of the grill.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basicas whose telephone number is 703 306 3476. The examiner can normally be reached on Flexible.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 703 308 0101. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872 9302 for regular communications and 703 872 9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0861.

September 27, 2004

  
Alfred Basicas  
703 306 3476